

LAND TENURES IN THE GOLD COAST

[In the Journal of the Royal African Society, January, 1943, Mr A. J. Loveridge has an instructive NOTE ON THE DEVELOPMENT OF LAND TENURES IN THE GOLD COAST, which we here reprint with acknowledgments.]

THE PURPOSE of this note is to state a problem. There is no attempt to prove the premises of the argument but all the facts are capable of proof—at any rate, as relating to the Gold Coast. It seems likely that similar facts would be found in other West African Colonies.

The declared policy is of "indirect rule." Indirect rule is not merely rule through the forms and processes of the native customary law, but rather rule through the inherent power of the Chiefs to govern their tribesmen. In none of the anthropological studies is it clearly stated what is the essence of that inherent power. The power of fetishes is known, as are the sacred rites incidental to the installation of a chief, the purification of a "stool" and the sanctification of the "royal" personage. It is known, too, that a chief exercises power to maintain order within a tribe, but the reason why a chief is sanctified and his office is subjected to sacred rites is that he is the protector of the tribe—that is, the protector of the rights of the tribesmen. There could be no more sacred deity and no more saintly office.

A member of a tribe swears allegiance to the chief. A chief swears to maintain the tribal customs and rights. The most important of these rights and customs is the customary right to farm on the tribal land. An able bodied "stranger" could, by ancient custom, obtain some land upon which to farm if he swore allegiance to the chief, and while there was land available, because in war his aid would be valuable in the protection of the tribesmen's rights—the right to live and earn a livelihood.

These customary titles to farming rights were the principal objects of the chiefs' protective duties—the prime reason for the existence of a chief. It was for the protection of the tribal land that tribes went to war—it is for land that nowadays they principally litigate. The land is the cause of the greater number of the tribal disputes which litigation has failed to settle, and which inter-tribal war is no longer allowed to settle.

The customary law is that the rights of the tribesman over tribal land given to him for his livelihood were confined to the usufruct. The land was held in fee from the Chief. Allegiance was the consideration for protection. An early judgment of the English Courts stated that in customary law there was no such thing as a freehold. Furthermore, the land belonging to the tribe which was not actually farmed was protected by the Chief for the sake of the tribal rights of hunting and collecting forest produce. There was no such thing as unoccupied land. The untitled land was commonly occupied. The customary law still is that there is no freeholding and no unoccupied land. The African outlook is still one of the greatest jealousy where land is concerned.

But cocoa farming in the hands of

Africans and mining in the hands of European Corporations have impinged on this customary law, and in many ways cocoa farming with its attendant wealth and consequent building in the cocoa areas has struck the more serious blow at that law—and remember that that law is the basis of the Chiefs' rule.

The movement to the cocoa land is not confined to natives of the areas in which such land is situated. There are many such areas in which not more than 50 per cent of the populace are members of the land-owning tribe and a large proportion of the alien half is farming cocoa on tenures which were originally native but which have been sold to them or otherwise passed to them by an apparent process of law. English forms of conveyancing are more and more used—and used by people not properly familiar with them. By sale, mortgage, and (very often) disposed in execution of a decree from the Courts, land originally held on a native customary tenure becomes the subject of an English title and the person holding that title is not a native of the land-owning tribe. He has sworn no allegiance, he admits no duty to the Chief, he protests at the claim to the Chief to exercise jurisdiction over him. After a series of such transfers the owner in fact claims to be a freeholder. There is another judgment of the Court (later than that which affirms the impossibility of a freehold) that asserts that the Court can only accept accomplished facts. A freehold is very frequently accomplished.

But "strangers" have not merely gained titles to land formerly held on a customary tenure. They have gained direct titles to parts of the untitled—but not "unoccupied"—land.

The customary law is not incapable of development and in a number of these cases leases (apparently in perpetuity) were developed as a new custom—the rentals being usually a proportion of the produce. In other cases titles purporting to be according to the English Law have been granted in consideration of a cash payment (or the donation of gin).

But in either case the terms are not strict and those that exist are not strictly enforced. Where rentals have fallen into arrear and a series of transfers have occurred the title becomes, in the way previously described, in the nature of a freehold.

Where the rent payments have been maintained, the revenues accruing to the Chief of Elders who granted the title may or may not be spent for the tribal benefit—and even where they are apparently so spent there is no means of checking the receipt of the full rental. The titles of the mining companies are in this class as, of course, the subsoil was untitled. Their leasehold titles are perfected and the native interests safeguarded in the Concessions Court but the revenue is a similar bait to the avaricious. Nevertheless—suppose that it is spent for the tribal benefit—it still falls to the Chiefs to decide what is the tribal benefit. Suppose even that a Native Authority Treasury is established which does ensure an expenditure for the tribal benefit, the disposal of the land, as distinct from

the disposal of the consideration, is not within its purview, and when the process which this article outlines has proceeded some way, even the consideration does not find its way to revenue. There is no Domesday Book. A Chief with his Council may be benevolently minded but the calls of the present are usually more pressing than those of the future and yet it is the tribal inheritance that is disposed of parcel by parcel. The protector becomes the disposer of the inheritance. The trustee becomes the owner, and furthermore, even as trustee he would only be concerned with the rights of the land-owning tribe.

Here is an enclosure of the common land—here the root of detribalisation. For stranger freeholders and for lessees of tribal land, contesting the authority of the Chief is an interest they must have if they hope to improve their titles.

The elders of the land-owning tribe will form into cliques for the substitution of a chief by their own nominee. For the revenues from ownership of land (the trust is overlooked) are well worth a fight even if the spoils are to be many times divided. Disputes between tribes, and between chiefs of the same tribe are traceable to the same cause. Any scheme of economic development involving the use of land brings inevitably in its train a contest for the spoils of ownership. The most notorious of all tribal disputes arose through the opening of a mine.

The titles to land are so vague that disputes between claimants occupy a large part of the time of the Courts. So vague that their value as security is negligible. Agricultural credit is therefore at usurious rates. The owners of the titles themselves are chary of investing capital in them and there is the complaint of shifting cultivation.

There still remains some virgin land and cocoa growing has brought such relative riches to the people that this problem has remained obscured. Economic and personal liberty has been safeguarded in the past by free access to the soil. The only premium payable for this invaluable insurance has been allegiance (and, in the past, the liability to fight for it). The insurers now are approaching bankruptcy, and there will remain no patrimony for the future generation.

There is the problem. It cannot be solved by a gesture of good will, as can (say) the demand for higher education by the endowment of a secondary school. It requires some analysis and consideration first.

We are glad to reprint this informative and thoughtful survey which deserves the earnest consideration of all who are concerned with the administration of our West African colonies. It demonstrates that the system of "indirect rule" is breaking down, because the fundamental principle of native law and custom is breaking down. The chiefs are ceasing to be the protectors of the equal rights of their tribesmen to the use of the land. Private ownership of land is being substituted for tribal ownership, and this process is being accelerated by commercial mining and industrial development which is increasing to a great extent the value of land. On the one hand chiefs are

encouraged by the prospect of gain to treat as their individual property what should be held in trust for the tribe, and on the other hand natives and others are induced to try to establish titles to land which is growing in value.

The customary law is not being strengthened or replaced by modern systems of land tenure which would safeguard the rights of the people, and inequality and monopoly is advancing at a rapid pace. Thirty years ago a system of land tenure was established in Northern Nigeria which was intended to secure equal rights to land by ensuring that every landholder should pay a rent for it to the State and that this rent should be periodically revised so as to make certain that the full value of the land itself went to the community while at the same time securing that the holder had certainty of tenure and property in the improvements which his individual effort created. It is a matter for investigation whether this

law has been properly administered, or whether under the system of "indirect rule" it has been allowed to fall into desuetude, and whether this system with proper safeguards for its due administration should be extended to other parts of West Africa. Alternatively, it may be found that there, as well as in other British colonies throughout the world, the system of individual title to land has progressed so far, that the better course is to recognize the situation as it exists, and to correct its faults by the method of land value taxation, accompanied by a remission of poll taxes, customs duties and other oppressive taxation, thus securing the joint right of the people to the value of land while safeguarding property in the earnings of labour and the fruits of individual initiative. This is the great task which must be undertaken if the British colonial empire is to be the abode of free men, freed from exploitation and monopoly.—EDITOR, *Land & Liberty*.

MEADOW THOUGHTS—Richard Jefferies

THE LITTLE lawn beside the strawberry bed, burned brown there, and green towards the house shadow, holds how many myriad grass-blades? Here they are all matted together, long and dragging each other down. Part them, and beneath them are still more, overhung and hidden. The fibres are intertangled, woven in an endless basket work and chaos of green and dried threads. A blameable profusion this; a fifth as many would be enough; altogether a wilful waste here. As for these insects that spring out of it as I press the grass, a hundredth part of them would suffice. The American crab tree is a snow mount in spring; the flakes of bloom, when they fall, cover the grass with a film—a bushel of bloom, which the wind takes and scatters afar. The extravagance is sublime. The two little cherry trees are as wasteful; they throw away handfuls of flower; but in the meadows the careless, spendthrift ways of grass and flower and all things are not to be expressed. Seeds by the hundred million float with absolute indifference on the air. The oak has a hundred thousand and more leaves than necessary, and never hides a single acorn. Nothing utilitarian—everything on a scale of splendid waste. Such noble, broadcast, open-armed waste is delicious to behold. Never was there such a lying proverb as "Enough is as good as a feast." Give me the feast; give me squandered millions of seeds, luxurious carpets of petals, green mountains of oak leaves.

The greater the waste, the greater the enjoyment—the nearer the approach to real life. Casuistry is of no avail; the fact is obvious; nature flings treasures abroad, puffs them with open lips along on every breeze, piles up lavish layers of them in the free open air, packs countless numbers together in the needles of a fir tree. Prodigality and superfluity are stamped on everything she does. The ear of wheat returns a hundredfold the grain from which it grew. The surface of the earth offers to us far more than we can consume—the grains, the seeds, the fruits, the animals, the abounding products are beyond the power of all the human race to devour. They can, too, be multi-

plied a thousandfold. There is no natural lack. Whenever there is lack among us it is from artificial causes, which intelligence should remove.

From the littleness, and meanness and niggardliness forced upon us by circumstances, what a relief to turn aside to the exceeding plenty of nature! There are no bounds to it, there is no comparison to parallel it, so great is this generosity. No physical reason exists why every human being should not have sufficient, at least of necessities. For any human being to starve, or even to be in trouble about the procuring of simple food, appears, indeed, a strange and unaccountable thing, quite upside down, and contrary to sense, if you do but consider a moment the enormous profusion the earth throws at our feet. In the slow process of time, as the human heart grows larger, such provision I sincerely trust, will be made that no one need ever feel anxiety about mere subsistence. Then, too, let there be some imitation of this open-handed generosity and divine waste. Let the generations to come feast free of care, like any finches on the seeds of the mowing-grass, from which no voice drives them. If I could but give away as freely as the earth does!—"Meadow Thoughts, Richard Jefferies (1848-1887)," in a series of *Selected English Essays*, chosen and arranged by W. Peacock, published by the Oxford University Press.

Jefferies could never have called himself a Socialist; but he sympathized with that part of Socialism which claims for every man the full profit of the labour of his hands.

"His soul saw through the weary years—
Past war-bells' chimes and poor men's
tears—

That day when Time shall bring to
birth

(By many a heart whose hope seems vain,
And many a fight where Love slays Pain)
True Freedom, come to reign on
earth."

—From Sir Walter Besant's *Eulogy of Richard Jefferies*.

CORRESPONDENCE

THE AUSTRALIAN SCENE

THE EDITOR, *Land & Liberty*

SIR—There are anxious times ahead for the primary industries of Australia. Owing to war conditions a big measure of control has been introduced, and producers have little say in the product of their labour. The majority submit to the dictatorship of Boards and Government officials, believing it will only be for the war period. It is questionable, however, whether producers will be free to direct their own enterprise when hostilities cease. Professor G. L. Wood, addressing the Melbourne University Committee of Convocation, said: "It was common belief in Australia that economic freedom and individual liberty would be restored after the war; that the shackles of government control would be lifted. The idea was a sample of the triumph of hope over experience. They had to realize that the pre-1939 status quo would never be restored. They were condemned to a system of government control where almost every aspect of economic life would be subject to interference. That was inevitable, unless the problem of correlating the functions of primary, secondary, and tertiary workers and of restoring a spirit of team work and co-operation to the world was tackled now." This is the considered opinion of a competent observer, and primary producers should give it serious consideration.

Under government control we get fixation of prices, limitation of area and a host of other interferences with natural law. There is little "team work and co-operation" between the primary and secondary industries. The economic policy adopted by the Australian Parliament has been designed to spoonfeed the secondary industries at the expense of those essential to our national prosperity. Prior to the war primary industries were in a parlous condition. The man on the land had to contend against seasonal conditions, high cost of production and low prices for products, hence it is no wonder that many went under with the strain and were forced into insolvency.

It is to be regretted that primary producers as a body have never united for their own economic salvation. They have always been the plaything of party politicians. They have been termed "the backbone of the country" when politicians wanted votes, but these same politicians when elected have broken the backbone with the taxation and other burdens imposed upon it. There has been too much desire on the part of a majority of the men on the land to chase shadows, rather than to demand measures which would give them real relief. They have gone after stabilization schemes, fixed prices, bushel and acreage bounties, and such like palliative measures, which at best merely "rob Peter to pay Paul." None of these proposals touch the CAUSE of the trouble, namely the high cost of production. Until that is dealt with there is no hope of the primary industries being placed on a sound economic basis.

The high tariff policy of Australia has proved a curse to country producers.